IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6676 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI MADHUBHAI PATIL

Versus

DISTRICT SUPERINTENDENT OF POLICE

Appearance:

1. Special Civil Application No. 6676 of 2002

MR JB PARDIWALA for Petitioner No. 1

MR PANDYA, AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/08/2003

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged the order at Annexure-D dated 16-7-2001 by which the District Superintendent of Police, Navsari passed an order of recovery of certain amount on the ground that the petitioner was wrongly given higher pay scale for the period from 19-8-1988 to 28-2-2001. It is

stated that the petitioner was wrongly given higher pay scale in the cadre of Sub Inspector and, therefore, recovery of salary paid in excess on the basis of the benefit of higher pay scale, which was wrongly given was ordered. The said order is challenged by the petitioner by way of this petition. During the pendency of this petition, this Court has stayed the order of recovery, meaning thereby that so far as the order regarding taking away the higher grade is concerned, the same is not stayed. As such the said prayer in the petition is only in connection with quashing the order directing recovery of the excess amount paid to the petitioner.

2) At the time of hearing of this petition, Mr.Pardiwala, learned advocate for the petitioner pointed out that the impugned order is passed against the petitioner without hearing him in any manner. He submitted that by the impugned order, the petitioner will be required to pay back large amount. He has submitted that even assuming that, by mistake, higher pay scale was given, before taking away the said benefit, the petitioner was required to be heard by the authority. As no order which may have civil consequences can be passed without affording opportunity of being heard, it is submitted by him that the order in question is in violation of the principles of natural justice. Mr.Pardiwala has also relied on the decision of a Division Bench of this Court, to which I am also a party, which is delivered in LPA No.578/2000 dated 4-4-2001. In the aforesaid order, the Division Bench has partly allowed the said appeal and recovery order was set aside. Relying upon the said judgement, it is submitted that the order of recovery is required to be quashed.

3) Learned AGP, Mr.Pandya, on the other hand, has supported the decision of the D.S.P., Navsari. It is submitted by him that, by mistake, higher pay scale was given to the petitioner. He has relied upon para 7 of the affidavit-in-reply filed by one Ashokkumar Sarang, Circle Police Inspector, Bilimora. In para 7, it is stated as under :

> "Content of para 3.4 are denied, the District Superintendent of Police vide order dated 16/7/2001 to recover the excess amount paid as there was a mistake in giving the higher pay scale. This was done in consultation with the local funds office of the Valsad District vide its communication dated 8/6/01. A copy of the said communication is annexed hereto and marked as Annexure-R-I, bearing No.4661/0223/39/31/6946,

wherein it was suggested that as the petitioner has failed to pass the departmental test is not entitled to the higher grade pay scale the recovery is to be affected. It was also clarify that BCSR Rule 57 (C) (2) is not applicable in the instant case."

4) Considering the facts and circumstances of the case, I am of the opinion that before passing impugned order, which is at Annexure-D, the petitioner was required to be given chance of hearing. It is not in dispute that the petitioner was given the benefits of higher pay scale and said benefit was continued for a long time. It was expected from the D.S.P., Navsari at least to give notice to the petitioner, asking him to show cause as to why the order, giving higher pay scale, should not be cancelled. Even before passing the order of recovery, he was required to be given opportunity of hearing and that is not being done. Under the circumstances, instead of deciding the rival contentions of the parties as regards the merits of the matter, the impugned order is required to be set aside only on the short ground and the matter is required to be sent back to the D.S.P., Navsari, again for passing appropriate order after hearing the petitioner on the subject.

5) Under the circumstances, the petition is allowed. Order at Annexure-D is quashed and set aside. The D.S.P., Navsari is directed to hear the petitioner, and after hearing, appropriate order in accordance with law may be passed. It is clarified that this Court has not examined the matter on merits and whether the higher pay scale was given rightly or otherwise is a question, which is required to be decided by the D.S.P., Navsari after hearing the present petitioner. Since the order in question is passed without hearing the petitioner, the matter is sent back to the D.S.P., Navsari to decide the issue in question in accordance with law. It will be open for the petitioner to rely upon the judgement of the Division Bench before the D.S.P., Navsari. Till appropriate decision is taken by the D.S.P., Navsari, as indicated above, further recovery may not be effected from the salary of the petitioner. It is clarified that, ultimately if any adverse order is passed against the petitioner, it would be open for him to challenge the same in accordance with law and such order of recovery, if passed, may not be implemented for a period of two weeks from the date of communicating the said decision to the petitioner. It would be open for the petitioner to challenge the said order, if it is against him, by way of filing appropriate proceedings in accordance with law.

6) Accordingly this petition is allowed. Rule is made absolute. No order as to costs.

(P.B.Majmudar, J.)

/malek